



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Rickman)
APPLICATION NO.: 10/717,758)
FILED: November 20, 2003) Examiner: I. J. Lobo
FOR: COMBINATION TAPE MEASURE) Art Unit: 3662
AND RANGE FINDER)
)

AFFIDAVIT OF BRANDON RICKMAN UNDER 37 C.F.R. §1.132

I, Brandon Rickman, hereby swear as follows:

1. I am the inventor and owner of United States Patent Application No. 10/717,758, entitled COMBINATION TAPE MEASURE AND RANGE FINDER.
2. I have reviewed the Office Actions mailed on April 20, 2004 and October 8, 2004, and the prior art references on which the rejections under 35 U.S.C. § 103(a) are based.
3. The purpose of this Affidavit is to submit evidence of secondary considerations of non-obviousness, including licenses taken and commercial success, in order to rebut the obviousness rejections in the Office Action mailed October 8, 2004.
4. I presently own my own construction company, Legacy Homes, which is based in Marietta, Georgia and I am familiar with the art of construction tools. I have bachelors degree's in social work and an associate's degree in criminal justice from LaGrange College in LaGrange, Georgia.
5. IDL Licensed Tools, LLC ("IDL") is a tool manufacturer. IDL has taken an exclusive license (Exhibit A) of the invention covered by the current disclosure and claims. The license was signed by Sean Quinn, a Managing Member of IDL.
6. Sean Quinn has substantial experience in the construction tool industry. Upon information and belief, Mr. Quinn formed the company PowerShot Tool Company, Inc. to

manufacture, *inter alia*, the PowerShot, an extremely successful industrial stapling tool. He formed this company when Black and Decker, the original manufacturers of the Power Shot, decided to divest itself of that product line. Mr. Quinn served as President of the PowerShot Tool Company until Masco Corp. purchased the company. Mr. Quinn also served as an executive with Black and Decker prior to forming PowerShot. Please see Exhibit B, a press release from Masco, which provides information on Mr. Quinn.

7. The exclusive license taken by IDL of the invention covers the manufacture and sale of a product built in accordance with the present application. The product covered by the license is specifically described as a "tool [that] is the combination tape measure and sonic measuring device, and all improvements thereon and expanded products derived therefrom." See Exhibit B, page 3, paragraph 1.9. See also page 1, stating that licensor has the right to license patents relating to "a sonic measuring device with standard tape measure."

8. With particular relevance here, IDL and I have executed a contract such that IDL will pay me a royalty for the right to manufacture and sell my invention. Under the terms of the license, IDL must pay a royalty on any product they sell consistent with the definition of the product prior to the patent grant. The willingness of an industry leader to take a license for a patent-pending product is evidence that they believe that my invention is not obvious.

9. It is my observation that the success of my invention lies in the claimed features of the current disclosure, including the combined elements of the sonic measuring device and the tape measure. This connection between the license and the features must be made because the license makes clear that these are the elements that are being contracted for. No additional external features or market force, such as marketing or dominant market position, can be attributed for this commercial success.

10. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements are made with knowledge that willful false statements and the like so made are punishable by fine, or imprisonment, or both under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

12-28-04

Date


Brandon Rickman
Inventor

EXHIBIT A

LICENSE AGREEMENT

THIS AGREEMENT, effective this 11th day of November, 2004, is made by and between IDL Licensed Tools, LLC with a principal place of business at 136 Rotary Drive, Summit, NJ 07901(hereinafter "LICENSEE") and Brandon Richman, a person of the State of Georgia having a principal place of business at 2546 Octavia Lane, Marietta, GA 30062.(hereinafter "LICENSOR").

WHEREAS, LICENSOR owns and has the right to license patents, patent applications, patent disclosure documents, trade secrets, know-how, copyrights and other rights of intellectual property, except trademarks, relating to a sonic measuring device with standard tape measure (the "PRODUCT"); and

WHEREAS, LICENSEE seeks an exclusive license with respect to such rights of intellectual property; and

WHEREAS, the parties wish to set forth herein the agreements they have reached with respect to certain other matters related hereto.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, LICENSEE and LICENSOR agree as follows:

ARTICLE I - DEFINITIONS

1.1 **AFFILIATE** means a person or entity which controls, or is controlled by, a party to this Agreement. In the case of a corporation, control means to have the capacity to elect a majority of directors of the corporation.

1.2 **LICENSED PROPERTY** means all patents, including LICENSED PATENTS, patent applications, patent disclosure documents, proprietary information, trade secrets, know-how, copyrights, and other rights of intellectual property, except trademarks, and all improvements thereto throughout the world which are owned or controlled by LICENSOR or its AFFILIATES now

general license agreement - brandon richman 1

or in the future relating to a PRODUCT including, but not limited to, the design, appearance, structure, use, method of operation or manufacture of a PRODUCT.

1.3 **LICENSED PATENTS** means all United States and foreign patents owned or controlled by LICENSOR or its AFFILIATES now or in the future relating to a PRODUCT including, but not limited to, the design, appearance, structure, use, method of operation or manufacture of a PRODUCT. LICENSED PATENTS include, but are not limited to, the patents identified on Exhibit A attached hereto. LICENSOR shall promptly notify LICENSEE of any LICENSED PATENTS which are not on Exhibit A and/or which arise after the date of this Agreement.

1.4 **ROYALTY PRODUCT** means a product whose manufacture, use or sale is covered by one or more claims of an unexpired LICENSED PATENT issued in a country in which such product is made or sold, provided such claim has not been adjudicated invalid or unenforceable in a decision from which all appeals have been exhausted or waived.

1.5 **NET SALES PRICE** means the full invoice price less, if paid or allowed, sales taxes, returns, allowances, quantity discounts, rebates, freight charges, bad debt reserves and product liability insurance premiums.

1.6 **CALENDAR YEAR** means the period beginning on January 1 of a given year and ending on December 31 of that year.

1.7 **COMMERCIAL DISTRIBUTION** means to sell in commercial quantities to a distributor or retail customer with inventory available for additional orders.

1.8 **STANDARD PATENT APPLICATION** means a complete application for a design or utility patent (as opposed to a provisional application), including one or more claims, filed in the United States Patent and Trademark Office.

general license agreement - brandon rickman 2

1.9 **PRODUCT** means: a tool than is the combination tape measure and sonic measuring device, and all improvements thereon and expanded products derived therefrom.

ARTICLE II - LICENSE

2.1 LICENSOR and its AFFILIATES grant to LICENSEE and its AFFILIATES an exclusive license under the LICENSED PROPERTY to make, have made, import, use, sell and offer to sell all PRODUCTS, and components thereof, throughout the world. This license includes the right to grant sublicenses for so long as this license remains exclusive. LICENSOR shall promptly disclose to LICENSEE all improvements which it may make or devise after the date of this Agreement and all such improvements shall automatically be included within the term "LICENSED PROPERTY."

2.2 During the term of this Agreement, and provided that any license granted herein remains exclusive, neither LICENSOR nor its AFFILIATES shall use the LICENSED PROPERTY to make, have made, import, use, sell or offer to sell any PRODUCTS.

ARTICLE III - ROYALTY

3.1 In consideration of the license granted LICENSEE and its AFFILIATES under Article II, LICENSEE shall pay to LICENSOR four percent (4%) of the first \$1,250,000 and two percent (2%) over \$1,250,000 of NET SALES PRICE for ROYALTY PRODUCTS sold by LICENSEE or its AFFILIATES during each CALENDAR YEAR.

3.2 If LICENSEE begins COMMERCIAL DISTRIBUTION of a PRODUCT and such PRODUCT is not at the time a ROYALTY PRODUCT, then, for a period of eighteen (18) months following the beginning of COMMERCIAL DISTRIBUTION of such PRODUCT ("POST COMMERCIAL DISTRIBUTION PERIOD"), such PRODUCT shall be treated as a ROYALTY PRODUCT for the purposes of this Agreement, except

that fifty percent (50%) of the royalties which become due upon the sale of such PRODUCT pursuant to this Article III shall be accrued and withheld from payment to LICENSOR. If a LICENSED PATENT issues during the POST-COMMERCIAL DISTRIBUTION PERIOD which renders such PRODUCT a ROYALTY PRODUCT, then all such withheld royalties shall be paid to LICENSOR with the first quarterly royalty payment immediately following the issuance of such LICENSED PATENT. If no LICENSED PATENT issues during the POST-COMMERCIAL DISTRIBUTION PERIOD which renders such PRODUCT a ROYALTY PRODUCT, however, then LICENSEE shall retain all such withheld royalties and, at the end of the POST-COMMERCIAL DISTRIBUTION PERIOD, LICENSEE's obligations to pay royalties for such PRODUCT shall terminate. If a LICENSED PATENT issues following the POST-COMMERCIAL DISTRIBUTION PERIOD which renders such PRODUCT a ROYALTY PRODUCT, then any such withheld royalties shall still be retained by LICENSEE, but LICENSEE shall, in that event, be obligated following such issuance to pay royalties pursuant to this Article III which become due upon the sale of any ROYALTY PRODUCT after such issuance.

3.3 If LICENSEE grants sublicenses under this Agreement, the sales of ROYALTY PRODUCTS by such sublicensees shall be considered to be sales of LICENSEE for the purpose of calculating royalties due under Paragraph 3.1.

3.4 Only one royalty payment for each ROYALTY PRODUCT sold shall be required regardless of the number of LICENSED PATENTS that cover a ROYALTY PRODUCT.

3.5 All royalty payments due to LICENSOR shall be paid within thirty (30) days after each calendar quarter, commencing on the first full calendar quarter following the date on which royalties become payable pursuant to Section 3.1 above.

3.6 LICENSEE shall at all times during the term of this Agreement, and for a period of three (3) years thereafter, keep

full and accurate business accounts and records showing the identities and quantities of ROYALTY PRODUCTS manufactured and sold by it, its AFFILIATES and any sublicensees.

3.7 Thirty (30) days after each calendar quarter beginning on the first full calendar quarter following the effective date of this Agreement, LICENSEE shall submit to LICENSOR a statement providing the number of ROYALTY PRODUCTS sold by it, its AFFILIATES and any sublicensees and the NET SALES PRICE for such sales. If a payment is due for such quarter, such payment shall accompany the submission of this statement. ROYALTY PRODUCTS shall be considered sold when collected.

3.8 LICENSEE will keep records enabling royalties payable to LICENSOR pursuant to this Agreement to be determined. At LICENSOR's written request, LICENSEE's books and records relating to the sale of ROYALTY PRODUCTS may be examined periodically during the term of this Agreement and following expiration or termination of this Agreement for any reason by an independent accountant appointed by LICENSOR only to the extent necessary to verify the reports required by this Agreement. LICENSOR may not examine LICENSEE's books and records more than once in any 12 month period. The accountant shall report only the royalty amount payable for the period under audit. Such audits may be conducted only at LICENSEE's premises during its regular business hours. LICENSOR shall pay the cost of conducting such audits except that LICENSEE will pay the auditing cost if a discrepancy of five percent (5%) or more and involving an underpayment of at least Ten Thousand Dollars (\$10,000) is found. Any discrepancy in payment will be repaid immediately. An audit may cover any period provided the period has not previously been audited and provided that the period under audit is within a three (3) year period immediately preceding the start of the audit. LICENSEE's internal finance

personnel and the independent auditor shall use reasonable efforts to resolve any discrepancies in payment. Any discrepancy which cannot be resolved by mutual agreement shall then be resolved by mediation or arbitration pursuant to this Agreement.

ARTICLE IV - MINIMUM ROYALTIES

4.1 There shall be no minimum royalties for the first eighteen (18) month period immediately following COMMERCIAL DISTRIBUTION of the first LICENSED PRODUCT ("NO MINIMUM ROYALTY PERIOD").

4.2 If, following the NO MINIMUM ROYALTY PERIOD, the royalties paid to LICENSOR by LICENSEE for a CALENDAR YEAR are less than Twenty-Five Thousand Dollars (\$25,000), LICENSOR shall have the right to convert all licenses granted under this Agreement to non-exclusive licenses by giving LICENSEE thirty (30) days' prior written notice of such conversion. Unless such notice is served upon LICENSEE within thirty (30) days of LICENSEE's service of its final quarterly royalty report for such CALENDAR YEAR upon LICENSOR, such conversion is waived in that instance. LICENSEE may prevent LICENSOR from converting the licenses granted under this Agreement to non-exclusive licenses if LICENSEE, prior to the expiration of thirty (30) days from the service of LICENSOR's written notice of such conversion, pays to LICENSOR a supplemental sum which, when added to the royalties paid for such CALENDAR YEAR, equals Twenty-Five Thousand Dollars (\$25,000).

4.3 If LICENSOR converts the licenses granted LICENSEE to non-exclusive licenses pursuant to Paragraph 4.2 and LICENSOR subsequently grants a license to a third party under the LICENSED PROPERTY, LICENSOR, within thirty (30) days of such granting, shall provide LICENSEE a copy of such license, redacting from such copy any information which is proprietary to

such third party. If the terms of such license are more favorable than the terms of the license granted to LICENSEE, LICENSEE shall have the right to elect the more favorable license by giving written notice to LICENSOR of such election. Such terms shall become applicable to LICENSEE's license upon LICENSEE's serving of such written notice upon LICENSOR.

4.4 If, following the NO MINIMUM ROYALTY PERIOD, the royalty paid by LICENSEE to LICENSOR for any CALENDAR YEAR is less than Ten Thousand Dollars (\$10,000), LICENSOR shall have the right to terminate this Agreement by giving LICENSEE thirty (30) days' prior written notice of such termination. Unless such notice is served upon LICENSEE within thirty (30) days of LICENSEE's service of its final quarterly royalty report for such CALENDAR YEAR upon LICENSOR, such conversion is waived in that instance. LICENSEE may prevent LICENSOR from terminating this Agreement if LICENSEE, prior to the expiration of thirty (30) days from the service of LICENSOR's written notice of such termination, pays to LICENSOR a supplemental sum which, when added to the royalties paid for such CALENDAR YEAR, equals Ten Thousand Dollars (\$10,000).

4.4 Following the NO MINIMUM ROYALTY PERIOD, the amount of minimum royalties required in any partial CALENDAR YEAR shall be pro-rated.

ARTICLE V - THIRD PARTY INFRINGEMENT

5.1 LICENSEE shall have the first right to institute and conduct legal action against, or to settle, any infringement of the LICENSED PROPERTY by a third party. In the event that LICENSEE elects to institute such legal action, LICENSOR shall cooperate and join as a party, if necessary, shall sign all papers necessary for such action, shall cooperate in discovery and shall otherwise undertake all reasonable actions required for LICENSEE's prosecution of such action. The expenses of such action, including attorneys' fees, shall be paid by LICENSEE, and any recoveries from a judgment in, or a settlement of, such action shall belong to LICENSEE. All sales under any sublicense granted by LICENSEE as part of a settlement, however, shall be considered to be sales of LICENSEE and shall be subject to the royalty provisions of this Agreement.

5.2 In the event that LICENSEE elects not to pursue an infringement of the LICENSED PROPERTY by a third party or if LICENSEE shall fail to either: (i) commence and diligently pursue settlement discussions with such third party, or, in LICENSEE's sole discretion, (ii) institute suit against such third party within six (6) months after LICENSEE actually receives notice of such infringement, LICENSOR shall have the right to bring an action in its own name against such third party. In the event that LICENSOR institutes such legal action, LICENSEE shall cooperate and join as a party, if necessary, shall sign all papers necessary for such action, shall cooperate in discovery and shall otherwise undertake all reasonable actions required for LICENSOR's prosecution of such action. In such event, the expenses of such legal action, including attorneys' fees, shall be paid by LICENSOR, and any recoveries from a judgment in, or a settlement of, such action shall belong to LICENSOR. LICENSOR may settle any such action by granting the

third party a license, without the right to grant sublicenses, under the LICENSED PROPERTY provided that all sums paid to LICENSOR for such license shall, after LICENSOR first recovers its expenses of such legal action, including attorney's fees, be divided equally between LICENSOR and LICENSEE.

5.3 Each party shall promptly notify the other party of any knowledge, and provide all facts concerning, any infringement of the LICENSED PROPERTY by a third party. The parties shall promptly confer and share such information as they may have concerning such infringement.

ARTICLE VI - TERMINATION

6.1 LICENSEE may terminate this Agreement by giving LICENSOR one hundred twenty (120) days' prior written notice of such termination.

6.2 If in an Arbitration conducted pursuant to Paragraph 9.5, the arbitrator decides that LICENSEE has breached a material term of this Agreement, and LICENSEE does not cure such breach within thirty (30) days of such decision, LICENSOR may terminate this Agreement by giving LICENSEE thirty (30) days' prior written notice of such termination.

6.3 If LICENSEE institutes any proceedings under federal or state laws for relief of debtors, including filing of an involuntary or voluntary petition or answer in bankruptcy, or the adjudication of LICENSEE as insolvent or bankrupt, or an assignment of all or a substantial portion of LICENSEE's property for the benefit of creditors, or the appointment of a receiver, trustee or conservator for a substantial portion of LICENSEE's assets, or the seizure by a sheriff, receiver, trustee or conservator of a substantial portion of LICENSEE's assets, and the failure, in the case of any of such events, to obtain the dismissal of such proceeding or removal of such

receiver, trustee or conservator within thirty (30) days of such event, LICENSOR may terminate this Agreement immediately by giving LICENSEE written notice of such termination.

6.4 Termination of this Agreement shall not relieve LICENSEE of its obligations to pay royalties which accrued prior to such termination and to provide a statement pursuant to Paragraph 3.6 with respect to such royalties.

6.5 Termination of this Agreement shall terminate any sublicenses granted hereunder.

6.6 The following rights and obligations shall survive any termination of this Agreement to the degree necessary to permit their complete fulfillment or discharge:

A. LICENSEE's obligation to supply a terminal report pursuant to this Agreement;

B. LICENSOR's right to receive or recover and LICENSEE's obligation to pay royalties due for payment pursuant to this Agreement at the time of any termination;

C. LICENSEE's obligation to maintain records and LICENSOR's right to conduct a final audit as provided in this Agreement;

D. Licenses running in favor of customers of LICENSEE regarding any product sold by LICENSEE prior to any termination and on which royalties have been paid as provided in this Agreement; and

E. Licenses running in favor of customers of a sublicensee regarding any product sold by the sublicensee prior to any termination and on which royalties had been paid as provided in this Agreement.

ARTICLE VII - WARRANTIES

7.1 LICENSOR warrants that it is the owner of the LICENSED PROPERTY presently existing and will be the owner of

general license agreement - brandon rickman 10

any future LICENSED PROPERTY, that it is authorized and has the legal power to extend the rights granted to LICENSEE under this Agreement and that it has not previously assigned, transferred, conveyed or otherwise encumbered the LICENSED PROPERTY.

7.2 LICENSOR warrants that LICENSEE's manufacture, use and sale of PRODUCTS, and components thereof, pursuant to the LICENSED PROPERTY presently existing does not, and pursuant to the LICENSED PROPERTY arising in the future will not, infringe the patents, trade secrets, know-how, copyrights or other rights of intellectual property, except trademarks, of any third party.

7.3 LICENSOR warrants that all annuities and maintenance fees have been timely paid for all of the LICENSED PATENTS presently existing, that such patents are subsisting and, to its knowledge, such patents are valid and enforceable. LICENSOR shall engage patent counsel which it reasonably believes to be competent to docket when all annuities and maintenance fees for the LICENSED PATENTS are due. LICENSOR shall instruct its patent counsel to promptly notify LICENSOR and LICENSEE in writing of same. LICENSEE shall promptly pay to such counsel all payments for same required in accordance with all such notices received by LICENSEE. All annuity and maintenance fees so paid by LICENSEE shall be deducted directly from royalty payments due from LICENSEE to LICENSOR hereunder.

7.4 LICENSEE warrants that it is authorized and has the legal power to enter into this Agreement.

7.5 During the term of this Agreement, LICENSEE shall maintain products liability insurance covering the ROYALTY PRODUCTS (a minimum of One Million Dollars (\$1,000,000) of coverage per occurrence and Two Million Dollars (\$2,000,000) aggregate); such policy shall name LICENSOR as an additional insured at no cost to LICENSOR. LICENSEE shall indemnify and hold LICENSOR harmless from and against any and all liabilities,

general license agreement - brandon rickman 11

losses, costs or expenses (including reasonable attorneys fees and costs of investigation incurred in defending against the same) resulting from or arising out of the manufacture, use, or sale by LICENSEE of any ROYALTY PRODUCT; provided, however, that LICENSOR shall promptly notify LICENSEE of any claim of any third party that may give rise to a claim hereunder and shall afford LICENSEE all reasonable assistance (at LICENSEE's expense) in defending against any such third party claim.

7.6 Each party shall cooperate to help the other party meet its obligations hereunder.

ARTICLE VIII - INDEMNIFICATION

8.1 LICENSOR shall defend, indemnify, protect and hold harmless LICENSEE and its officers, directors, employees, agents, attorneys, representatives, sublicensees, parent, subsidiaries and affiliate companies, and its and their successors and assigns from and against any and all damages, demands, costs, fees, liabilities and expenses of any kind or character, including attorneys' fees, incurred by LICENSEE or any of the foregoing in connection with any claims, causes of action, suits, or proceedings brought against it by third parties resulting from, relating to or arising out of any alleged infringement of any copyright, trademark, patent or other intellectual property right of any third party by reason of the manufacture, distribution or sale of PRODUCTS and/or the use of the LICENSED PROPERTY and/or the LICENSED PATENTS as permitted hereunder.

8.2 LICENSEE shall promptly notify LICENSOR of any such claims and LICENSOR shall, at its sole cost and expense, vigorously and diligently defend such claim. Notwithstanding the foregoing, LICENSEE shall have the right to participate in the defense or prosecution of the claim or demand through counsel of

general license agreement - brandon rickman 12

its own choosing, and such participation shall be at the LICENSEE's expense. The parties shall cooperate in the prosecution or defense of such claim and shall furnish such records, information and testimony and attend such conferences, discovery proceedings, hearings, trials and appeals as may reasonably be requested in connection with such claim. LICENSOR shall not settle or permit the settlement of any such third-party claim or action other than by payment of money without the prior written consent and full release of LICENSEE, which consent shall not be unreasonably withheld.

ARTICLE VIX - MISCELLANEOUS

9.1 This Agreement inures to the benefit of, and is binding upon, the legal successors and permitted assigns of the respective parties. This Agreement is not assignable by LICENSOR. LICENSEE may assign its rights and obligations under this Agreement to a person or entity to which substantially all of the assets of its business or the product line pertaining to the LICENSED PROPERTY are sold or transferred.

9.2 This Agreement shall be construed and interpreted in accordance with the Laws of the United States and the State of New Jersey.

9.3 This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

9.4 All notices or payments delivered by either party to the other party under this Agreement shall be in writing and delivered by express mail or overnight courier to the other party at its address stated in this Agreement, unless otherwise instructed in writing by the other party. Notices shall be deemed served or provided upon mailing.

9.5 All controversies arising out of or in connection with this Agreement shall first be submitted to non-binding mediation in New Jersey before a mediator mutually selected by the parties. In the event that the controversy is not resolved within ninety (90) days of such submission, then, unless the parties otherwise agree, such controversy shall be submitted to binding arbitration. Such arbitration shall be conducted in New Jersey before a single arbitrator under the Patent Arbitration Rules of the American Arbitration Association (AAA). Reasonable discovery may be permitted in connection with such arbitration. Judgment upon the decision rendered by the arbitrator may be entered in any Court. In any arbitration, the arbitrator may award arbitration costs and expenses to the prevailing party.

9.6 This instrument contains the entire agreement between the parties relating to its subject matter. This instrument may not be modified except by an instrument in writing signed by an officer or a duly authorized representative of each of the parties.

9.7 Except as otherwise expressly set forth herein, this Agreement does not confer any rights upon, or obligate either of the parties, to any person or entity other than each other.

9.8 Each party shall use its best efforts to cause any conditions to its obligations hereunder to be satisfied at or prior to the time by which such conditions must be satisfied. Each party agrees to execute and deliver any further documents or instruments necessary to effectuate this Agreement and the transactions contemplated hereby or reasonably requested by another party to perfect or evidence such party's rights hereunder. Each party shall use its best efforts to complete the transactions contemplated by this Agreement as promptly as practical. Each party shall promptly notify the other party of any information delivered to or obtained by such party which

general license agreement - brandon rickman 14

would prevent the consummation of any transaction contemplated hereby, or would indicate a breach of any representation or warranty of any party to this Agreement.

9.9 Unless otherwise provided herein, the waiver of any breach of any provision of this Agreement, or rights provided under this Agreement, shall not operate or be construed as a waiver of any subsequent breach or right.

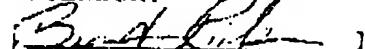
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

LICENSEE:



By: Sean M Quinn, managing member

LICENSOR:



By: Brian D. Pickman

EXHIBIT B

SUPPLEMENTAL FOURTH QUARTER INFORMATION

PowerShot Tool Company, Inc.
Florham Park, New Jersey

HISTORY

PowerShot Tool Company, Inc was formed as an independent company by Sean Quinn when the product line was divested by a power tool manufacturer in 1998. Today, the Company is a leading manufacturer of fastening products, including staple guns, glue guns, hammer tackers and riveting products.

PRODUCTS

PowerShot's brands include PowerShot®, Thermogrip®, PowerShot Pro and EasyShot®. The Company also has private label programs with major retailers in the U.S. and Canada. In 2002, PowerShot's unique globally-patented Forward Action® staple gun products represented nearly 75 percent of its revenue.

SALES

Since its formation as an independent company, PowerShot has grown at a compounded annual rate of over 50 percent. The Company's products are sold to major retailers serving professional contracting and DIY markets, as well as major craft retailers.

PowerShot will become an operating division of Masco's Arrow Fastener, a leading U.S. manufacturer of fastening tools and related products.

OPERATIONS

PowerShot's corporate offices are located in Florham Park, New Jersey. Manufacturing, distribution, engineering, customer service and purchasing operations are located in Wytheville, Virginia.

MANAGEMENT

PowerShot employs 64 full-time personnel, as well as up to 100 temporary assembly personnel based on seasonal demand. The Company is run by an executive management team, which includes:

- Sean Quinn, President, has served as the Company's president since its inception. Prior to the founding of PowerShot, he held various positions with Black & Decker.
- Nick Mastrone, Director of Sales, has served as the Company's Director of Sales since its inception. Prior to PowerShot, he held sales positions with AMSCO Sales Corporation for the Mid-Atlantic region.

ACQUISITION TERMS

The purchase price for PowerShot is consistent with Masco's financial criteria for acquiring

companies and the Company is expected to be modestly accretive to 2003 earnings.

Hansgrohe AG
Schiltach, Germany

THE COMPANY

Headquartered in Schiltach in Germany's Black Forest, Hansgrohe AG was founded in 1901 by Mr. Hans Grohe as a manufacturer of various metal products. A year later, the Company began manufacturing plumbing products and today is a leading European innovator, designer and manufacturer of kitchen and bath-related products. Today, Hansgrohe is a well-known brand name and an industry leader recognized for its aesthetic design and quality products.

PRODUCTS

Hansgrohe's products include hand-held and fixed showers, luxury shower systems, whirlpool tubs, steam showers and kitchen and bath faucets. These products are available in a variety of styles and finishes. Masco's affiliation with Hansgrohe began in the late 1970s with a cooperative venture to develop a new line of faucets for European markets based on Masco's proprietary technology.

SALES

Hansgrohe has annual sales of over \$300 million with an extensive network of customers throughout Europe, North America and Asia. Hansgrohe's products are marketed principally through the professional channel (plumbers and bath wholesalers) in Europe, with distribution in the U.S. through wholesalers, kitchen and bath distributors and retail outlets.



OPERATIONS

The Company operates 10 manufacturing facilities and 19 distribution centers in Europe, North America and Asia.

MANAGEMENT

Hansgrohe employs almost 2,500 people. The Company's executive management team includes:

- Klaus Grohe, Chief Executive Officer
- Siegfried Gaenslen, Chief Financial Officer
- Otto Schinle, Vice President Marketing and Sales
- Dr. Nicholas Matten, Executive Officer
- Karl-Heinz Hammann, Vice President Manufacturing and Operations

MASCO OWNERSHIP

Masco has had an investment in Hansgrohe for nearly two decades. With this additional investment, the Company has increased its ownership in Hansgrohe from 27 percent to 64 percent. The increased ownership will further foster the exchange of manufacturing, marketing and research and development information between Masco and Hansgrohe, and encourage collaboration on strategic initiatives and joint purchasing programs.

It is expected that the increased ownership of Hansgrohe will contribute modestly to Masco's 2003 earnings.

[Click here for Financials](#)

Copyright © 2004 Masco Corporation. All rights reserved. | [Terms of Use](#)